

ASSEMBLY BILL

No. 1400

Introduced by Assembly Member Laird
(Coauthors: Assembly Members Evans, Goldberg, Hancock,
Koretz, Leno, Levine, Lieber, and Montanez)
(Coauthors: Senators Kehoe, Kuehl, and Migden)

February 22, 2005

An act to amend Sections 51, 51.5, 51.7, 51.8, and 53 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1400, as introduced, Laird. Civil Rights Act.

The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition. The Unruh Civil Rights Act provides civil remedies for violations of its provisions.

This bill would further prohibit that discrimination on the basis of familial status, marital status, or sexual orientation, and would define related terms. The bill would integrate those definitions into other related provisions, and would provide that the identification of particular bases of discrimination in those provisions are illustrative rather than restrictive. The bill would make specified findings and declarations in that regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as
2 “The Civil Rights Act of 2005.”

3 SEC. 2. The Legislature finds and declares as follows:

4 (a) Even prior to passage of the Unruh Civil Rights Act,
5 California law has afforded broad protection against arbitrary
6 discrimination by business establishments.

7 (b) In keeping with that history and the legislative history of
8 the Unruh Civil Rights Act, California courts have interpreted the
9 categories enumerated in the act to be illustrative rather than
10 restrictive. It is the intent of the Legislature that these enumerated
11 bases shall continue to be construed as illustrative rather than
12 restrictive.

13 (c) Notwithstanding the erroneous interpretation of law by one
14 district California Court of Appeal in *Beaty v. Truck Insurance*
15 *Exchange* (1992) 6 Cal. App. 4th 1455, which incorrectly applied
16 the California Supreme Court’s ruling in *Harris v. Capital*
17 *Growth Investors XIV* (1991) 52 Cal. 3d 1142, and which the
18 California Supreme Court indicated in *Smith v. Fair Employment*
19 *and Housing Commission* (1996) 12 Cal. 4th 1143, 1160, fn. 11,
20 is not controlling, the Legislature affirms that the bases of
21 discrimination prohibited by the Unruh Civil Rights Act include,
22 but are not limited to, familial status, marital status, and sexual
23 orientation, as defined herein. By specifically enumerating these
24 bases in the Unruh Civil Rights Act, the Legislature intends to
25 clarify the existing law, rather than to change the law, as well as
26 the principle that the bases enumerated in the act are illustrative
27 rather than restrictive.

28 SEC. 3. Section 51 of the Civil Code is amended to read:

29 51. (a) This section shall be known, and may be cited, as the
30 Unruh Civil Rights Act.

31 (b) All persons within the jurisdiction of this state are free and
32 equal, and no matter what their sex, race, color, religion,
33 ancestry, national origin, disability, ~~or~~ medical condition, *familial*
34 *status, marital status, or sexual orientation* are entitled to the full
35 and equal accommodations, advantages, facilities, privileges, or
36 services in all business establishments of every kind whatsoever.

37 (c) This section shall not be construed to confer any right or
38 privilege on a person that is conditioned or limited by law or that

1 is applicable alike to persons of every sex, color, race, religion,
2 ancestry, national origin, disability, ~~or~~ medical condition, *familial*
3 *status, marital status, or sexual orientation.*

4 (d) Nothing in this section shall be construed to require any
5 construction, alteration, repair, structural or otherwise, or
6 modification of any sort whatsoever, beyond that construction,
7 alteration, repair, or modification that is otherwise required by
8 other provisions of law, to any new or existing establishment,
9 facility, building, improvement, or any other structure, nor shall
10 anything in this section be construed to augment, restrict, or alter
11 in any way the authority of the State Architect to require
12 construction, alteration, repair, or modifications that the State
13 Architect otherwise possesses pursuant to other laws.

14 (e) *The identification of particular bases of discrimination in*
15 *subdivisions (b) and (c) is illustrative rather than restrictive.*

16 (f) For purposes of this section:

17 (1) "Disability" means any mental or physical disability as
18 defined in ~~Section~~ Sections 12926 and 12926.1 of the
19 Government Code.

20 (2) "Familial status" has the same meaning as defined in
21 Section 12955.2 of the Government Code.

22 (3) "Medical condition" has the same meaning as defined in
23 subdivision (h) of Section 12926 of the Government Code.

24 ~~(f)~~
25 (4) "Religion" includes all aspects of religious belief,
26 observance, and practice.

27 (5) "Sex" has the same meaning as defined in subdivision (p)
28 of Section 12926 of the Government Code.

29 (6) "Sex, race, color, religion, ancestry, national origin,
30 disability, medical condition, familial status, marital status, or
31 sexual orientation" includes a perception that the person has any
32 of those characteristics or that the person is associated with a
33 person who has, or is perceived to have, any of those
34 characteristics.

35 (7) "Sexual orientation" has the same meaning as defined in
36 subdivision (q) of Section 12926 of the Government Code.

37 (g) A violation of the right of any individual under the
38 Americans with Disabilities Act of 1990 (Public Law 101-336)
39 shall also constitute a violation of this section.

40 SEC. 4. Section 51.5 of the Civil Code is amended to read:

1 51.5. (a) No business establishment of any kind whatsoever
2 shall discriminate against, boycott or blacklist, or refuse to buy
3 from, contract with, sell to, or trade with any person in this state
4 ~~because of the race, creed, religion, color, national origin, sex,~~
5 ~~disability, or medical condition of the person~~ *on account of any*
6 *characteristic listed or defined in subdivision (b) or (f) of Section*
7 *51, or of the person's partners, members, stockholders, directors,*
8 *officers, managers, superintendents, agents, employees, business*
9 *associates, suppliers, or customers, because the person is*
10 *perceived to have one or more of those characteristics, or because*
11 *the person is associated with a person who has, or is perceived to*
12 *have, any of those characteristics. The identification in this*
13 *subdivision of particular bases of discrimination is illustrative*
14 *rather than restrictive.*

15 (b) As used in this section, "person" includes any person, firm,
16 association, organization, partnership, business trust, corporation,
17 limited liability company, or company.

18 (c) This section shall not be construed to require any
19 construction, alteration, repair, structural or otherwise, or
20 modification of any sort whatsoever, beyond that construction,
21 alteration, repair, or modification that is otherwise required by
22 other provisions of law, to any new or existing establishment,
23 facility, building, improvement, or any other structure, nor shall
24 this section be construed to augment, restrict, or alter in any way
25 the authority of the State Architect to require construction,
26 alteration, repair, or modifications that the State Architect
27 otherwise possesses pursuant to other laws.

28 ~~(d) For purposes of this section:~~

29 ~~(1) "Disability" means any mental or physical disability as~~
30 ~~defined in Section 12926 of the Government Code.~~

31 ~~(2) "Medical condition" has the same meaning as defined in~~
32 ~~subdivision (h) of Section 12926 of the Government Code.~~

33 SEC. 5. Section 51.7 of the Civil Code is amended to read:

34 51.7. (a) All persons within the jurisdiction of this state have
35 the right to be free from any violence, or intimidation by threat of
36 violence, committed against their persons or property because of
37 ~~their race, color, religion, ancestry, national origin,~~ political
38 ~~affiliation, sex, sexual orientation, age, disability~~ *or on account*
39 *of any characteristic listed or defined in subdivision (b) or (f) of*
40 *Section 51, or position in a labor dispute, or because another*

1 person perceives them to have one or more of those
2 characteristics. The identification in this subdivision of particular
3 bases of discrimination is illustrative rather than restrictive.

4 (b) This section does not apply to statements concerning
5 positions in a labor dispute which are made during otherwise
6 lawful labor picketing.

7 ~~(b) As used in this section, "sexual orientation" means~~
8 ~~heterosexuality, homosexuality, or bisexuality.~~

9 SEC. 6. Section 51.8 of the Civil Code is amended to read:

10 51.8. (a) No franchisor shall discriminate in the granting of
11 franchises solely ~~because of the race, color, religion, sex, national~~
12 ~~origin, or disability~~ *on account of any characteristic listed or*
13 *defined in subdivision (b) or (f) of Section 51* of the franchisee
14 ~~and the racial, ethnic, religious, national origin, or disability~~
15 *composition of a neighborhood or geographic area reflecting any*
16 *characteristic listed or defined in subdivision (b) or (f) of Section*
17 *51* in which the franchise is located. Nothing in this section shall
18 be interpreted to prohibit a franchisor from granting a franchise
19 to prospective franchisees as part of a program or programs to
20 make franchises available to persons lacking the capital, training,
21 business experience, or other qualifications ordinarily required of
22 franchisees, or any other affirmative action program adopted by
23 the franchisor. *The identification in this section of particular*
24 *bases of discrimination is illustrative rather than restrictive.*

25 (b) Nothing in this section shall be construed to require any
26 construction, alteration, repair, structural or otherwise, or
27 modification of any sort whatsoever, beyond that construction,
28 alteration, repair, or modification that is otherwise required by
29 other provisions of law, to any new or existing establishment,
30 facility, building, improvement, or any other structure, nor shall
31 anything in this section be construed to augment, restrict, or alter
32 in any way the authority of the State Architect to require
33 construction, alteration, repair, or modifications that the State
34 Architect otherwise possesses pursuant to other laws.

35 SEC. 7. Section 53 of the Civil Code is amended to read:

36 53. (a) Every provision in a written instrument relating to real
37 property ~~which~~ *that* purports to forbid or restrict the conveyance,
38 encumbrance, leasing, or mortgaging of that real property to any
39 ~~person of a specified sex, race, color, religion, ancestry, national~~
40 ~~origin, or disability,~~ *because of any characteristic listed or*

1 *defined in subdivision (b) or (f) of Section 51* is void and every
2 restriction or prohibition as to the use or occupation of real
3 property because of ~~the user's or occupier's sex, race, color,~~
4 ~~religion, ancestry, national origin, or disability~~ *any characteristic*
5 *listed or defined in subdivision (b) or (f) of Section 51* is void.

6 (b) Every restriction or prohibition, whether by way of
7 covenant, condition upon use or occupation, or upon transfer of
8 title to real property, which restriction or prohibition directly or
9 indirectly limits the acquisition, use or occupation of that
10 property because of ~~the acquirer's, user's, or occupier's sex, race,~~
11 ~~color, religion, ancestry, national origin, or disability~~ *any*
12 *characteristic listed or defined in subdivision (b) or (f) of Section*
13 *51* is void.

14 (c) *The identification of particular bases of discrimination in*
15 *subdivisions (a) and (b) is illustrative rather than restrictive.*

16 (d) In any action to declare that a restriction or prohibition
17 specified in subdivision (a) or (b) is void, the court shall take
18 judicial notice of the recorded instrument or instruments
19 containing the prohibitions or restrictions in the same manner
20 that it takes judicial notice of the matters listed in Section 452 of
21 the Evidence Code.